

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Janesville, Wisconsin

SAM VAN GALDER, INC., A COACH
USA COMPANY,¹

Employer

and

Case 30-RC-6123

TEAMSTERS LOCAL UNION NO. 579,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at hearing.

² The name of the Petitioner appears as amended at hearing.

³ Timely Briefs from the Employer and Petitioner have been received and duly considered.

3. The Labor Organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time bus drivers and mechanics employed by the Employer at its Janesville, Wisconsin facility, including coach drivers, charter drivers, school bus drivers and driver/janitors; but excluding all professional, managerial, janitorial and office clerical employees, guards and supervisors as defined in the Act.

The Employer is a Wisconsin corporation engaged in the business of transporting passengers and freight from its Janesville, Wisconsin facility. There is no history of collective bargaining in this unit. The parties stipulated to the appropriateness of the bargaining unit and I find that it is an appropriate unit for purposes of collective bargaining. The parties stipulated, and I find, that the following persons are excluded from the bargaining unit based on their supervisory status, that is, they hire, fire, have the authority to assign work and use independent judgment: mechanics supervisor Ron Thompson, dispatch supervisors Mark Tadder and Jeff Nyman, and supervisors/managers Gary Runge, Stephen Van Galder and John Thurman. The employer stated that there are approximately 142 employees in the unit.⁴

⁴ The Employer proposed an eligibility date of those who were in the unit at the end of the payroll period ending June 12, 1999. The Petitioner stated that it had no objection to that date provided that it comported with the Board's formula to determine the eligibility date. I am, therefore, setting the date of voter eligibility in accordance with Board policy, as set forth in the section entitled Direction of Election, *infra*.

ISSUES

The Employer contends that the election should be held on August 20, 1999 by mixed manual-mail ballot to maximize voter participation. Specifically, the Employer proposes that the 5 employees who are assigned to drive the 5 charters currently scheduled to be on tour during the entire day of August 20 (the day it proposes the manual election be held) be allowed to vote by mail ballot. The Petitioner opposes any election date after July 23, 1999, the 42nd day following the date it filed its petition. While not taking any position regarding manual versus mail balloting, the Petitioner stated its belief that a mail ballot election would best maximize voter participation.

FACTS

The Employer provides school bus service for the Janesville school district, including running daily routes to and from school, and providing charter services for school field trips, athletic programs and other school programs. The company also transports disabled employees to and from work at a local company named Kandu Industries, provides “line service”⁵ between Madison, Wisconsin and downtown Chicago, Illinois, and provides charter tours throughout the United States. Additionally, the company employs mechanics and “wash bay” employees.⁶ The company currently employs 44 school bus drivers, 50 charter bus drivers, 30 line run drivers, 9 Kandu Industries drivers, 7 mechanics, and 2 wash bay employees.⁷

John Thurman, who has held the position of Executive Vice President and General Manager for the past four and one half years, provided the sole testimony at hearing. All

⁵ The record is silent regarding what “line service” means or what it entails.

⁶ The record is silent regarding what work the “wash bay” employees perform.

⁷ The parties did not stipulate which company departments were included in the bargaining unit, and this was not an issue at hearing.

departments except the school bus driver department work year round. The school bus driver department works seasonally during the school year and summer school term and runs school bus routes and charters for field trips and other school programs. During the last school year, which ended June 3, 1999,⁸ the company employed 53 school bus drivers. Only 8 school bus drivers are currently working to service summer school routes and programs, which runs from June 14th through July 23. When neither summer school nor the regular school term is in session there is generally no work for the school bus drivers except for a “a few charters here or there” when a school bus is chartered by a church or some other group. The next Janesville School District school year will begin again on August 25. The school bus drivers are expected to report to work the week before school starts, which is the week beginning August 16, to go over such matters as route assignments, route changes, safety programs and procedures. Besides this contact during the week before school starts, there are no meetings or other contact with the school bus drivers when they are not working during the summer months.

Thurman contended that a number of these school bus drivers may be out of town until the week before school starts when they report to work. He based this belief on the company’s policy that school bus drivers are not permitted to take vacation leave during the school year and because approximately 5 or 6 employees have discussed their summer travels with him in the past.

The charter bus driver department conducts chartered tours to various destinations throughout the state and the country. A charter bus driver will be out of town for the duration of a tour. The record was silent regarding the average or range of tour duration. The only evidence provided about these tours was a page from the company’s Charter Log Report that details its

⁸ All dates herein refer to 1999 unless otherwise indicated.

tours scheduled to depart August 19 through August 22 at all hours of the day. Thurman estimated that on August 20 there will be five charter bus drivers conducting tours that will not return to Janesville anytime that day. He stated that the company had not yet assigned drivers to those tours, but that the company would make those assignments by August 1 and proposed that those 5 employees be allowed to vote by mail ballot. The record was silent regarding what, if any, charters are scheduled for all other days. The record is also silent regarding what the charter bus drivers do when they are not assigned to drive a chartered tour.⁹ The line run driver department operate the “line service” between Madison, Wisconsin and downtown Chicago, Illinois.

Thurman testified that the majority of the employees live in Janesville or its surrounding communities. Two or three employees live in the Rockford, Illinois area, which is about 33 miles away from the company facility, and one lives in Watertown, Wisconsin, which is about 55 or 60 miles away or perhaps a little less than that. Thurman also stated that the company possesses the addresses of all employees. The record contains no other information about the employees or work in the line department, or the other departments including Kandu Industries, mechanics or wash bay, for instance, whether these employees report to work on a daily basis, their hours of work, and whether any employees in these departments are laid off during the summer months.

DISCUSSION AND CONCLUSION

Section 11302.1 of the National Labor Relations Board’s Representation Proceeding Casehandling Manual (hereafter Casehandling Manual) provides the following guidance for

⁹ The question arises whether these employees report to work at all on days when they are not scheduled to drive a charter bus.

setting the date of an election: an election should be held as early as practical; the date selected should be one that balances the desires of the parties and operational considerations, along with the desirability of facilitating employee participation and prompt and timely conduct of election; and an election should not be scheduled prior to the 25th day after the issuance of a direction of election, unless the parties waive their right to file a request for review, and not later than the 30th day.

Section 11336 of the Casehandling Manual provides that voting may be conducted, in whole or in part, by mail. The Casehandling Manual further provides, and the Board has reaffirmed, that the Regional Director has discretion in determining whether to order a mail or manual election. *San Diego Gas and Electric*, 325 NLRB No. 218 (1998). While the Board has held “under existing board precedent and policy, the applicable presumption favors a manual election, not a mail-ballot election,” *Willamette Industries, Inc.*, 322 NLRB 856 (1997), mail balloting may be used when a manual election is infeasible.

In *San Diego Gas and Electric*, the Board provided the following guidance regarding when a manual election is infeasible and the circumstances under which it is within the Regional Director’s discretion to direct the use of mail ballots:

When deciding whether to conduct a mail ballot election or mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are “scattered” because of their job duties over a wide geographic area; (2) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources”

Id. at 6-7. The Board went to explain with more particularity that “[t]he scattered criteria are intended to apply *in any situation where all employees cannot be present at the same place at the same time.*” *Id.* at 6 n.7 (citations omitted; emphasis added).

The record evidence establishes that 36 school bus drivers are not scheduled to work at all until the week of August 16, and all 44 school bus drivers do not work from July 23 until the week of August 16. The record further establishes that charter buses are scheduled to depart to various destinations throughout the state and country on any given day, and that any number of the 52 charter bus drivers may be scheduled to drive a bus out of town on any given day at any given time. Because the eligible voters in this unit are scattered inasmuch as 30% of eligible voters do not report to work from July 23 until sometime during the week of August 16, and another 36% perform duties that take them away from the facility for days at a time, the current scheduling of which is uncertain, I find conducting a manual election in this unit to be infeasible and therefore direct that the election take place by mail ballot. In making this decision, I note that neither party stated any opposition to a mail ballot election, and both parties agreed that use of mail balloting, at least in part, would maximize voter participation. Additionally, I note that the Employer stated that it possesses the addresses of all employees. I further direct that the ballots be mailed to employees on August 2, 1999, and received at the Regional Office, National Labor Relations Board, Thirtieth Region, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin by 11:00 a.m. on August 16, 1999. The ballots will be counted at the Regional Office at 1:30 p.m. on August 16, 1999. Seeking review of this decision will not delay the mailing of the ballots or the August 16 return date mentioned above. It will only cause a delay of the actual count until such time as the Board has ruled on any request for review.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth herein and in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS LOCAL UNION NO. 579, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby

directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned **two** copies of an election eligibility list containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before July 15, 1999.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by July 22, 1999.**

Signed at Milwaukee, Wisconsin this 8th day of July 1999.

Irving E. Gottschalk, Acting Regional Director
National Labor Relations Board
Thirtieth Region
Henry S. Reuss Federal Plaza, Suite 700
310 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

370-0717-0100
370-6325-5000